IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5687 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R.K.POPAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5687 of 1995

MR NIKHIL KARIEL for Petitioner No. 1

MS MANISHA LAVKUMAR, ASST. GOVT. PLEADER for Respt No.1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/04/2005

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the

order of compulsory retirement dated 24.03.95 passed by the Disciplinary Authority, a copy of which is at Annexure 'E' to the petition.

2. The petitioner was originally recruited on 27.5.1968 as Sales Tax Officer Class II. He was promoted as Sales Tax Officer Class-I, and was thereafter further promoted as Assistant Sales Tax Commissioner. The petitioner was subjected to Charge Sheet in connection with various irregularities alleged to have been committed by him while serving as Sales Tax Officer Class-I and Assistant Sales Tax Commissioner. The charges alleged against the petitioner were of serious nature. An inquiry officer was appointed and a regular departmental inquiry was initiated against the petitioner in connection with the allegations levelled against him.

2.1 In the charge sheet, it was alleged against the petitioner that the petitioner, without proper verification, gave registration to one Dhanamjay Oil Industries, Jamnagar. It was further alleged that the petitioner has not taken any proceedings against the said trader who has committed default in filling necessary forms, which resulted into a loss of Rs.1,55,880/_ to the State Government.

2.2 It is also alleged against the petitioner that he wrongly gave registration to one Ramdevji Oil Industries. The said trader had not shown correct transaction in the books of accounts and had not paid sales tax dues to the tune of Rs.10,26,127/_ during S.Y. 2038, and has also not paid sales tax dues to the tune of Rs.13,05,989/_ during the period from 4.2.1983 to 8.9.1983. It is alleged that the petitioner has negligently, and on a wrong interpretation of law, gave registration to the said Ramdevji Oil Industries, which resulted into financial loss to the State Government.

2.3 It is also alleged against the petitioner that inspite of the fact that a partnership firm in the name of JK Oil Industries, Jamnagar was dissolved, yet the petitioner had not cancelled the registration, and infact allowed amendment in the registration of the said firm. Ultimately it was found that the said trader had destroyed the register and the said trader had not paid sales tax due of Rs.5,91,840/_.

2.4 It is also alleged against the petitioner that one Don Industries, Jamnagar was not holding licence under the Sales Tax Act, yet the said trader tried to mislead the department by stating that he is holding the

licence, and it purchased certain articles against licence form, but the petitioner had not recommended any penal proceedings against the said trader.

2.5 It is also alleged that the petitioner, as Sales Tax Commissioner, transferred about 34 Sales Tax Inspectors, and he has misused his position and has posted two Inspectors - namely: B.C. Jani and N.C. Patel in the Sales Tax Department, eventhough their credentials were highly doubtful.

2.6 On the aforesaid serious charges, departmental inquiry was initiated against the petitioner. The Inquiry Officer ultimately found that the charges against the petitioner are proved. The disciplinary authority thereafter inflicted punishment of compulsory retirement.

2.7 The aforesaid order of punishment was initially challenged before this Court by way of filing Special Civil Application No. 6565 of 1990. The Division Bench of this Court, while disposing of a group of petitions, disposed of this petition also, and allowed the same on the ground that at the time of inflicting punishment, copy of the Inquiry Report was not made available to the petitioner. It was, however, made clear in the judgment that the said decision will not preclude the Disciplinary Authority from reviving the proceedings from the stage of supply of the copy of the report of the Inquiry Officer along with other material, and ultimately to pass an appropriate order in accordance with law. Accordingly, the aforesaid order of compulsory retirement was set aside on the ground of non-supply of copy of Inquiry Officer's Report.

2.8 The Disciplinary Authority thereafter gave a copy of the report of the inquiry officer to the petitioner by letter dated 22.4.1992. The petitioner was given copy of the inquiry officers report and the petitioner was asked to give his explanation in connection with the same. The petitioner gave a detailed reply by his letter dated 19.5.1992. The State Government, after considering the reply, again passed an order dated 24th March 1995, of compulsory retirement of the petitioner. A copy of the said order is at Annexure 'E' to the petition at pages 178-179. Being aggrieved by the said order, the petitioner has again approached this Court by filing this petition under Article 226 of the Constitution of India.

3. Mr. Kariel, learned advocate for the petitioner, vehemently submitted that while passing the impugned order, the disciplinary authority has not given separate

reasons, but it has merely stated that the reply of the petitioner dated 19.5.1992 is taken into consideration by the State and in the said reply, no new facts are stated and the petitioner has merely repeated his earlier reply. Accordingly, the same punishment is inflicted by which the petitioner is subjected to punishment of compulsory retirement. It is further submitted by Mr. Kariel that in the impugned order of punishment, detailed reasons are not given nor the detailed representation of the petitioner was taken into account. It was also submitted by Mr.Kariel that the penalty of compulsory retirement is on the higher side, and, considering the facts and circumstances of the case, the disciplinary authority should have inflicted punishment of withdrawal of few increments instead of awarding punishment of compulsory retirement. It is submitted by Mr. Kariel that as per the information of the petitioner, initially the disciplinary authority wanted to inflict punishment of withholding of few increments, but the GPSC disagreed with the same and recommended punishment of compulsory retirement, and therefore, the said order is passed.

4. Ms. Manisha Lavkumar, learned Assistant Government Pleader submitted that the petitioner was subjected to departmental inquiry in connection with serious charges and all the charges have been proved. It is submitted by her that the petitioner was given adequate opportunity to defend his case. Even he was supplied with a copy of the report of the inquiry officer and his explanation given thereafter was also considered before inflicting the punishment. She, therefore, submitted that the impugned order of punishment is passed after considering the facts and circumstances of the case, and the same does not require any interference by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India. Ms. Manisha Lavkumar further submitted that the disciplinary authority on its own found that looking to the nature of the charges levelled against the petitioner, which are proved, punishment of compulsory retirement is just and proper and even GPSC also concurred with the proposed punishment and ultimately the aforesaid order of punishment is passed against the petitioner. Learned advocate Ms. Manisha Lavkumar submitted that infact the Government has taken a lenient view because considering the charges which are proved against the petitioner, the Government could have imposed punishment of dismissing the petitioner from service, but the Government has imposed punishment of compulsory retirement.

5. I have heard the learned counsel in detail. I

have also gone through the bunch of papers annexed with the petition. It is required to be noted that the petitioner was subjected to departmental inquiry in connection with serious irregularities alleged against him. On the face of it, the allegations and charges levelled against the petitioner are of very serious nature. The Inquiry Officer, after considering the voluminous evidence on record, ultimately found that the charges against the petitioner are proved. The petitioner was serving as a Sales Tax Officer Class-I and Sales Tax Assistant Commissioner at the relevant time and has acted in a most negligent and casual manner in the matter of granting registration to various traders which resulted into considerable financial loss to the State Government. As per the report of the Inquiry Officer, the petitioner has tried to favour certain traders which ultimately resulted into loss to the State Government in the matter of revenue in the form of sales tax recovery. It is not possible to accept the say of Mr. Kariel that it is merely a case of negligence. It is required to be noted that this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, is not expected to decide the matter as if it is hearing a regular appeal. On the basis of evidence available on the record, the disciplinary authority has found that the charges levelled against the petitioner are proved in a proper manner. Before inflicting the punishment, explanation of the petitioner was also sought for, and a copy of the inquiry officer's report was also made available to the petitioner. It, therefore, cannot be said that the disciplinary authority, at the time of passing the order of punishment, has not taken into account the say of the petitioner. The disciplinary authority, after accepting the report of the Inquiry Officer, has ultimately passed the final order of punishment, and Mr. Kariel is not in a position to say as to how the impugned order is bad in law. In the impugned order, the disciplinary authority has clearly stated that the Government has taken into account the reply of the petitioner dated 19.5.1992 and ultimately, the order of compulsory retirement was passed by the State Government. The said order, therefore, cannot be said to be illegal in any way. Before passing the impugned order of punishment, the petitioner was given reasonable opportunity to defend his case at the time of inquiry and even before passing the impugned order, show cause notice was issued to the petitioner, and subsequently penalty in question is inflicted. Hence, the argument of Mr. Kariel of disproportionality of the penalty, in my view, is required to be rejected straightway as there is hardly any substance in the said

submission. The petitioner was subjected to serious charges in the departmental inquiry and the said charges have been proved against the petitioner. The Government itself has shown leniency by inflicting punishment of compulsory retirement instead of passing an order of dismissal or removal. It cannot be said that the punishment inflicted on the petitioner is, in any way, disproportionate. This Court cannot sit in appeal over the decision of the disciplinary authority in the matter of awarding punishment to the delinquent. The disciplinary authority, in its wisdom, looking to the charges levelled and proved against the petitioner, has inflicted the punishment of compulsory retirement and the same is a proper punishment. Under the circumstances, it cannot be said that the disciplinary authority has committed any error in inflicting the said punishment, especially when it cannot be said that the said punishment is disproportionate in any manner looking to the charges proved against the petitioner. As a matter of fact, I find some substance in the arguments of learned Assistant Government Pleader Ms. Manisha Lavkumar that the Government itself has taken a lenient view because for such serious charges proved against the petitioner, the order of dismissal or removal could also have been passed. I, therefore, do not find any substance in the argument of Mr. Kariel to the effect that as per the information of the petitioner, initially the disciplinary authority wanted to inflict punishment of withholding of few increments, but the GPSC disagreed with the same and recommended punishment of compulsory retirement. Except mere say, there is nothing on the record to suggest that the disciplinary authority wanted to inflict such punishment. Even in the affidavit-in-reply, it is stated by the State Government, that the order of punishment is passed after following due procedure and the order in question is passed after consultation with GPSC and such consultation is required as per the rules and procedure prescribed. In paragraph 7 of the affidavit-in-reply it is stated that the Government, after careful consideration of the representation of the petitioner, has issued the order of punishment. Considering the aforesaid aspect, there is absolutely nothing to suggest that the disciplinary authority has ever decided to inflict lesser penalty to which the GPSC did not agree, and there is nothing in the petition to substantiate the aforesaid allegation. Even otherwise, looking to the charges proved against the petitioner in the departmental inquiry, in my view, the order of compulsory retirement can never be said to be on the higher side. In fact, in my view, the punishment is on the liberal side. The petitioner, who was holding the

post of Sales Tax Officer Class-I at the relevant time, committed serious misconduct in the matter of finance which resulted into huge loss of revenue to the State in the matter of recovery of sales tax.

6. No other points were canvassed on behalf of the petitioner.

7. Since I do not find any substance in the arguments advanced on behalf of the petitioner, and since in my view it cannot be said that the disciplinary authority has acted contrary to law in passing the ultimate order of punishment, the petition deserves to be rejected, and is accordingly rejected. Rule is discharged. No order as to costs.

mathew [P.B.MAJMUDAR, J.]